J. E. Brown Electric, Inc. *and* International Brotherhood of Electrical Workers, Local 479, AFL–CIO. Case 16–CA–16108

November 23, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS, DEVANEY, BROWNING, AND COHEN

Upon a charge filed May 20, 1993, by International Brotherhood of Electrical Workers, Local 479, AFL–CIO (the Union), the Regional Director for Region 16 issued a complaint against J. E. Brown Electric, Inc. (the Respondent), alleging that the Respondent engaged in certain unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act. Copies of the complaint and notice of hearing were served on the Respondent and the Charging Party. The Respondent filed a timely answer denying the commission of any unfair labor practices.

On September 30, 1993, on the basis of an all-party stipulation, the parties filed with the Board a petition to transfer the instant proceeding to the Board without a hearing before an administrative law judge and submitted a proposed record consisting of the formal papers and the parties' stipulation of facts with attached exhibits. On November 22, 1993, the Deputy Executive Secretary of the Board issued an Order granting the petition, approving the stipulation, and transferring the proceeding to the Board. Thereafter, the General Counsel and the Respondent filed briefs.

The Board has considered the stipulation, the briefs, and the entire record of this proceeding and makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Texas corporation, is engaged in the business of electrical construction and repair of electrical restaurant equipment at its Lumberton, Texas facility and construction sites, where it annually purchases and receives products, goods, and materials valued in excess of $50,000 directly from points located outside the State of Texas. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The issue is whether the Respondent violated Section 8(a)(5) and (1) of the Act by failing to adhere to the exclusive hiring hall provisions of the collective-bargaining agreement between the parties.

A. *Facts*

The exclusive hiring hall provision of the parties' applicable collective-bargaining agreement[1] requires the Respondent to obtain electricians to perform bargaining unit work through the Union's hiring hall, which is the ''sole and exclusive source of referral of applicants for employment.'' The agreement provides that if the Union is unable to refer applicants for employment within 48 hours of receiving the Respondent's request, the Respondent is free to secure ''applicants'' without using the hiring hall, and that all such ''applicants,'' if ''hired,'' shall have the status of ''temporary employees.'' The agreement further provides that the Respondent is required to ''replace such 'temporary employees''' as soon as applicants are available from the hiring hall.[2]

The agreement also contains a nondiscrimination clause.[3] The parties stipulated that ''[a]ny qualified electrician may register at the hall on the out-of-work list(s) and will be referred i[f] there is work available.''

In August 1992 the Respondent requested that the Union provide licensed electricians to perform con-

[1] On April 22, 1987, the Respondent entered into a Letter of Assent ''A'' which bound it to the terms of the collective-bargaining agreement between the Union and the Coastal-Sabine Division of the Southeast Texas Chapter, National Electrical Contractors' Association, Inc. (NECA), a multiemployer bargaining group. The Respondent, by virtue of the contract, agreed to recognize the Union within the meaning of Sec. 8(f) of the Act as the representative of a unit appropriate for the purposes of collective bargaining under Sec. 9(b) (employees performing electrical work), for the period of March 2, 1992, through March 6, 1993, and March 6, 1993, through March 6, 1995. The parties have stipulated that the Respondent's recognition of the Union was pursuant to Sec. 8(f) of the Act.

Although the Respondent, by letter to the Union dated January 13, 1993, indicated its wish to terminate the existing collective-bargaining agreement, and on February 1, 1993, announced its intention to terminate the delegation of its bargaining rights to NECA, the parties stipulated that the Respondent's Letter of Assent has never been timely revoked and that the Respondent at all relevant times has been bound by the terms of the collective-bargaining agreement between NECA and the Union.

[2] Art. II, secs. 6 and 7 provide:

> Section 6: If the registration list is exhausted and the Local Union is unable to refer applicants for employment to the Employer within forty-eight (48) hours from the time of receiving the Employer's request . . . the Employer shall be free to secure applicants without using the Referral Procedure but, such applicants, if hired, shall have the status of ''temporary employees.''
>
> Section 7: The Employer shall notify the Business Manager promptly of the names and Social Security numbers of such ''temporary employees'' and shall replace such ''temporary employees'' as soon as registered applicants for employment are available under the Referral Procedure.

[3] Art. II, sec. 4 states:

> The Union shall select and refer applicants for employment without discrimination against such applicants by reason of membership or non-membership in the Union and such selection and referral shall not be affected in any way by rules, regulations, bylaws, constitutional provisions or any other aspect or obligation of Union membership policies or requirements.

struction work, which is bargaining unit work. The Union was unable to provide the requested electricians. After 48 hours had passed, the Respondent again contacted the Union repeating its request for licensed electricians. The Union again could not provide the requested electricians. On August 17, 1992, the Respondent transferred three nonbargaining unit employees from the restaurant repair portion of its business to perform the bargaining unit work.

In January 1993 the Union had available electricians on its referral lists with appropriate licenses. After learning that the three transferred employees were still performing bargaining unit work, the Union requested that the Respondent hire electricians through the Union's hiring hall to perform the work pursuant to sections 6 and 7 of the parties' collective-bargaining agreement. The Respondent advised that because of the workload of the Respondent, additional electricians were not required. The Respondent refused to lay off the existing employees who were performing unit work. The Union replied that it did not seek the layoff or termination of the existing employees, but protested that the Respondent was required to hire union-referred electricians under section 7 of the contract.

On March 8, 1993, without request for a referral from the hiring hall, the Respondent hired another electrician (whom the Respondent had first contacted in August 1992) to perform bargaining unit work.

On May 20, 1993, the Union filed the instant unfair labor practice charge against the Respondent for violating the contract's exclusive hiring hall provisions.

B. *The Parties' Contentions*

The General Counsel contends that the Respondent failed to comply with the hiring hall provisions of the parties' collective-bargaining agreement by failing in and after January 1993 to hire available electricians from the hiring hall to perform bargaining unit work, thereby violating Section 8(a)(5) and (1) of the Act.

The Respondent contends that it never ''hired'' any new ''temporary employees'' to perform bargaining unit work but allowed existing employees to perform unit work, and that the exclusive hiring hall provision in the collective-bargaining agreement does not require it to lay off or discharge existing employees. The Respondent also contends that the effect of the provision is to require the Respondent to hire only union members in violation of the Texas ''right-to-work'' statute.

C. *Analysis*

We find that in August 1992, when the Respondent filled unit positions by transferring existing employees from nonunit positions, the Respondent secured ''applicants'' from outside the hiring hall for bargaining unit positions. Such ''applicants'' were required to be ''hired'' as ''temporary employees.'' When the Union notified the Respondent in January 1993 that hiring hall applicants were available, the collective-bargaining agreement required that the Respondent ''replace'' the ''temporary employees'' with the qualified applicants referred through the hiring hall.

We find no merit to the Respondent's argument that it was allowed to fill the unit positions on a permanent basis because it ''transferred'' existing nonunit employees instead of ''hiring'' employees to fill the positions. First, we note that what the agreement leaves employers free to do is to ''secure'' applicants without using the hiring hall if the Union is unable to supply applicants within the 48-hour period. Regardless of the fact that the three transferred employees came from within the Respondent's own work force, they were as clearly ''secured'' to fill the bargaining unit positions in question as if they had been brought in from the outside. Given the evident purpose of the provision, the reference to ''hired'' employees is best explained as merely the use of a common term for securing employees rather than a loophole to allow an employer to circumvent the hiring hall by hiring workers into nonunit positions from sources other than the hiring hall and then transferring them over to vacant unit positions.[4] We further note that, according to the stipulated record, when the Respondent originally responded to the Union's demand that the positions in question be vacated for applicants from the hiring hall, it did not articulate the interpretation of the contract provision that it now presents to us. Rather, the Respondent simply refused the Union's demand and stated that it planned to ''rescind'' the collective-bargaining agreement.

We therefore conclude that the contract's exclusive hiring hall provisions for ''hiring'' cover the ''transferred'' employees, who were therefore ''temporary employees'' to be replaced as soon as hiring hall applicants became available. Consequently, the Respondent has failed to comply with the contract's exclusive hiring hall provisions since January 1993, when the

[4] In fact, if one were to employ the Respondent's literal-minded approach to the entire provision, one could argue that the Respondent did not have the right to fill the positions with its own transferred employees in the first instance, because they could not properly be considered ''applicants'' within the meaning of the provision. Under this reading, the term ''hired'' in the following sentence would be explained by the fact that the parties had agreed that the only way in which persons not coming through the hiring hall could be placed in unit positions would be by the employer's selection of outside ''applicants'' after the 48-hour period had expired. Thus, under any reading of the provision that takes a consistent approach throughout, the Respondent was not privileged under the contract to do what it did.

Wholly apart from the internal inconsistency of the Respondent's argument, it is contrary to the parties' stipulation (Stipulation, par. 11) that the Respondent was ''allowed by the collective bargaining agreement'' to transfer existing employees from the restaurant equipment repair portion of the business, which is nonbargaining unit work, to perform bargaining unit work.

Union notified the Respondent that qualified hiring hall applicants were available.

We further conclude that in March 1993 the Respondent again failed to comply with the contractual hiring hall provisions when, without requesting a referral, it hired an individual who was not referred through the hiring hall to perform unit work. The Respondent has made no effort to justify this hiring as contractually permitted.

The Respondent also argues that the provision as enforced by the Union requires the Respondent to hire union members only and that it is thus invalid under the Texas ''right-to-work'' statute, pursuant to Section 14(b) of the Act,[5] which outlaws union-security clauses. This argument is without merit.

Contrary to the Respondent's contention, the hiring hall provisions at issue do not require that the Respondent hire only union members. Rather, the contract provides that the Union shall refer applicants without discrimination ''by reason of membership or non-membership in the Union,'' and referral shall not be affected ''by rules, regulations, bylaws, constitutional provisions, or any other aspect or obligation of Union membership policies or requirements.'' Nor does the record support the Respondent's assertion that the Union enforced the contract provisions to require union membership of applicants in order to be referred. Indeed, the parties stipulated that any qualified electrician could register on the out-of-work list and would be referred if work was available.

Thus, on the record before us, the Union maintains a hiring hall that, though exclusive, does not require union membership. Because courts have held that Section 14(b) does not empower states to prohibit nondiscriminatory exclusive hiring halls, the Respondent's reliance on the Texas ''right-to-work'' statute is misplaced.[6] *NLRB v. Associated Contractors*, 349 F.2d 449, 453 (5th Cir. 1965), cert. denied 382 U.S. 1026 (1966), enfg. 143 NLRB 409 (1963); *Laborers Local 107 v. Kunco, Inc*., 472 F.2d 456, 458–459 (8th Cir. 1973).

For the foregoing reasons, we find both that the Respondent has failed to comply with the exclusive hiring hall provisions of the agreement and that this failure violated Section 8(a)(5) and (1) of the Act. *American Commercial Lines*, 296 NLRB 622 (1989).

CONCLUSION OF LAW

By failing to comply with the hiring hall provisions of the parties' collective-bargaining agreement, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist from engaging in those unfair labor practices and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to comply with the exclusive hiring hall provisions of the parties' contract, to offer full and immediate employment to those work applicants who would have been referred to the Respondent for employment through the Union's hiring hall were it not for the Respondent's unlawful conduct, and to make them whole for any loss of earnings and other benefits they may have suffered by reason of the Respondent's failure to hire them. Backpay is to be computed as set forth in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Further, we shall also order the Respondent to make whole the appropriate fringe benefit trust funds for losses suffered by reimbursing such funds to the extent that contributions would have been made on behalf of those individuals who would have been referred to work were it not for the Respondent's unlawful failure to use the Union's hiring hall[7] and to make those individuals whole for any losses they may have suffered as a result of the Respondent's failure to make such contributions, *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed above.

We recognize that in prior cases involving the repudiation of exclusive hiring hall provisions, the Board has limited the respondent's remedial obligation to making employees whole for lost wages and benefits, and the Board has not provided an affirmative reinstatement order.[8] These cases do not address how the

[5] Sec. 14(b) provides:

> Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

[6] We also reject the Respondent's contention that by enforcing the hiring hall provision, the Union would be compelling it to discharge existing employees in violation of Sec. 8(a)(3) of the Act. See *Teamsters Local 357 (Los Angeles-Seattle Motor Express) v. NLRB*, 365 U.S. 667 (1961). *Plumbers Local 577*, 196 NLRB 124 (1972), and the other cases on which the Respondent relies, are inapposite. In each of those cases, unlike here, the union caused the employer to transfer and/or otherwise deny employment to an individual because of nonmembership in the union or for other discriminatory reasons.

[7] Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our ''make-whole'' remedy. *Merryweather Optical Co*., 240 NLRB 1213 (1979).

[8] These cases, which are listed in *American Commercial Lines*, 291 NLRB 1066, 1076 fn. 48 (1988), are as follows: *Southwestern Steel & Supply*, 276 NLRB 1569 fn. 1 (1985), enfd. 806 F.2d 1111 (D.C. Cir. 1986); *Southwest Security Equipment Corp*., 262 NLRB 665, 666 (1982), enfd. 736 F.2d 1332 (9th Cir. 1984), cert. denied 105

exclusion of a reinstatement provision comports with the Board's established remedial policy of attempting ''to restore, so far as possible, the status quo that would have obtained but for the wrongful act.'' *NLRB v. J. H. Rutter-Rex Mfg. Co.*, 396 U.S. 258, 265 (1969).

This precedent appears to be premised on what the Board termed in *Dean General Contractors*, 285 NLRB 573, 574 (1987), ''a precompliance presumption against reinstatement in the construction industry.''[9] In *Dean General*, a case involving a discharge in violation of Section 8(a)(1) of the Act, the Board rejected ''the application of a precompliance presumption against reinstatement adverse to the aggrieved employee on behalf of the adjudicated wrongdoer.'' Overruling prior cases to the extent inconsistent, the Board held in *Dean General* that, ''as in other industries, reinstatement and backpay issues in the construction industry ordinarily will be resolved by a factual inquiry during the compliance process rather than by resorting to a presumption that may or may not accurately reflect the realities of the employment relationship or by resorting to a shift of evidentiary burdens from the adjudicated wrongdoer to the aggrieved employee.'' Accordingly, the *Dean General* Board ordered the traditional reinstatement and backpay remedy with the understanding that the respondent could introduce evidence at compliance regarding the likelihood of the discharged employee's transfer or reassignment to other projects subsequent to the job from which he had been unlawfully discharged.

We find that the reasoning of *Dean General* is controlling here, and we overrule the cases cited in fn. 8, supra, to the extent they are inconsistent with our decision today. The Board has applied the *Dean General* remedy to employees denied hire in violation of Section 8(a)(3),[10] and there is no principled basis for withholding this remedy here to employees who were denied hire in violation of Section 8(a)(5). In both situations, had the employer acted lawfully, certain applicants would have been hired. Therefore, in both kinds of cases, ordering the employer to offer those applicants employment and to pay backpay is necessary to ''undo the effects of violations of the Act.'' *NLRB v. Seven-Up Bottling Co.*, 344 U.S. 344, 346 (1953). Indeed, a remedy that does not include a reinstatement provision fails to fulfill our responsibility under Section 10(c) of designing ''measures . . . to recreate the conditions and relationships that would have been had there been no unfair labor practices.'' *Franks v. Bowman Transportation Co.*, 424 U.S. 747, 769 (1975).

For these reasons, we shall henceforth include reinstatement orders as a necessary part of the remedy in cases involving the repudiation of exclusive hiring hall provisions with the understanding that, as in *Dean General*, reinstatement and backpay issues will be resolved by a factual inquiry at the compliance stage of the proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, J. E. Brown Electric, Inc., Lumberton, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to comply with the hiring hall provisions of the parties' collective-bargaining agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the terms of the hiring hall provisions of the parties' existing collective-bargaining agreement.

(b) Offer full and immediate employment to those work applicants who would have been referred to the Respondent for employment through the Union's hiring hall were it not for the Respondent's unlawful conduct and make them whole for any loss of earnings and other benefits they may have suffered by reason of the Respondent's failure to hire them, in the manner set forth in the remedy section of this decision.

(c) Make whole the appropriate fringe benefit trust funds for losses suffered by reimbursing such funds to the extent that contributions would have been made on behalf of those individuals who would have been referred to work were it not for the Respondent's unlawful failure to use the Union's hiring hall and make those individuals whole for any losses they may have

S.Ct. 1854 (1985); *Yeager Distributing*, 261 NLRB 847, 849 (1982), enfd. mem. 718 F.2d 1109 (9th Cir. 1983), cert. denied 469 U.S. 917 (1984); *Wayne Electric*, 226 NLRB 409 fn. 3 (1976). See also the subsequent *American Commercial Lines* case (296 NLRB 622, 626 (1989)).

[9] Members Stephens and Cohen suggest, in their concurring opinion, that another possible reason for the Board's failure to grant a reinstatement remedy in these cases lies in the ''practical problems'' involved in determining which individuals on the hiring list would be entitled to employment. This reasoning, however, is not explicit in any of the cited decisions. In any event, in our view, reference to the particular hiring hall rules of the unions involved will in most cases provide ample guidance to determine which individuals were in line for employment at the time of the employer's hiring hall violation. To the extent there may be any uncertainty, the remedial purposes of the Act are certainly not served by allowing the Respondent, who is the wrongdoer, to benefit from that uncertainty by relieving the Respondent from a remedy that is imposed in almost every other case of discriminatory refusal to hire. For all these reasons, we do not view the potential for ''practical problems'' as a serious impediment to ordering a respondent to employ individuals who would have been in line for employment had the respondent not repudiated its hiring hall obligations.

[10] *Casey Electric*, 313 NLRB 774 (1994), and cases cited therein.

suffered as a result of the Respondent's failure to make such contributions, in the manner set forth in the remedy section of this decision.

(d) Preserve and, on request, make available to agents of the Board for examination and copying, the payroll records, social security records, timecards, personnel records, and all of the other records necessary to analyze the amounts due under the terms of this Order.

(e) Post at its facility in Lumberton, Texas, copies of the attached notice marked ''Appendix.''[11] Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

MEMBERS STEPHENS and COHEN, concurring.

We agree, for the reasons stated in the opinion for the majority, that the Respondent violated Section 8(a)(5) and (1) of the Act when it repudiated the contractual hiring hall provision by refusing to accept qualified electricians referred through the hall for four bargaining unit positions which the Respondent had previously filled with employees Rachel Knighton, Raymond O. Tippett Jr., Wiley Tanton, and Randy Bridges.

We also concur in the reinstatement order, but we do not believe it wise to announce any broad new rule that such orders are always appropriate for hiring hall repudiation cases. While it is true, as our colleagues state, that the Board has not supplied adequate rationale for withholding such orders in similar cases in the past, we do not agree that a general presumption about the construction industry—effectively overruled by *Dean General Contractors*, 285 NLRB 573, 574 (1987)—was the only conceivable justification for the Board's prior practice. A better reason lies in the complex patterns of employment under a typical hiring hall clause, pursuant to which employees frequently work for one employer, then return to the out-of-work list for referral to the next job up when they once again reach the top of the list. Subsequent jobs are likely to be with different employers, although this can be affected by particular contractual hiring hall provisions, such as ''by-name'' referral provisions, that permit an employer to obtain referral of an employee whose work he liked without regard to position on the out-of-work list.[1] Deciding whom—of the many employees available for referrals during a substantial period of hiring hall clause repudiation—should be ordered to be ''reinstated'' to existing jobs at the time when implementation of the Board's order is commenced is likely to present considerable practical problems to all parties to a hiring hall arrangement. If the respondent employer commences to abide by the hiring hall clause as directed, it would seem that this would require accepting for existing jobs the next available employee on the hiring hall out-of-work list. It is not likely to effectuate the purposes of the Act to delay orderly resumption of hiring hall referrals in order to await the outcome of a determination in the compliance process of which ones of the various employees who had passed through the hall during the period of contract repudiation would likely be holding now-existing jobs had the employer been accepting referrals as required. This practical difficulty is, we submit, the reason that the Board has—without apparent protest by any party—always given simply a make-whole remedy, but not a reinstatement order, when repudiation of a hiring hall clause was found.[2] *Dean General Contractors* presented no such problem because it concerned reinstatement of a particular employee who had been hired and then discharged by the Respondent employer; and *Casey Electric*, 313 NLRB 774 (1994), cited by our colleagues, had a similarly limited and specific focus, in that it concerned 23 named individuals who were discriminatorily refused jobs on two particular projects. Initial hiring by the employer was at issue, not referral from a hiring hall.

Because the complaint in this case has a limited focus—the Respondent is alleged to have repudiated the hiring hall clause solely by virtue of its actions respecting positions held by the employees named in paragraphs 10 and 11 of the complaint (whom it refused to replace with qualified hiring hall applicants)—we agree that a reinstatement order is appropriate here. It is, as our colleagues agree, subject to the Respondent's right under *Dean General* to show in compliance that even if the particular applicants whom the Union sought to refer to the positions in question had been accepted by the Respondent, the jobs would subsequently have terminated and the employees would not have been retained for other projects.

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[1] See, e.g., *Plumbers Local 32 (Alaska Pipeline)*, 312 NLRB 1137, 1138 fn. 1 (1993). Although most hiring halls are found in the construction industry, that is by no means the only industry in which they exist. For example, *American Commercial Lines*, 291 NLRB 1066, 1076 (1988), cited by our colleagues, arose in the maritime industry.

[2] See cases cited at fn. 8 of the opinion for the majority.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to comply with the hiring hall provisions of our collective-bargaining agreement with the International Brotherhood of Electrical Workers, Local 479, AFL–CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor, abide by, and apply the terms of the hiring hall provisions of our existing collective-bargaining agreement with the International Brotherhood of Electrical Workers, Local 479, AFL–CIO.

WE WILL offer full and immediate employment to those work applicants who would have been referred to us for employment through the Union's hiring hall were it not for our unlawful conduct and WE WILL make them whole for any loss of earnings and other benefits they may have suffered by reason of our failure to hire them, with interest.

WE WILL make whole the appropriate fringe benefit trust funds for losses suffered by reimbursing such funds to the extent that contributions would have been made on behalf of those individuals who would have been referred to work were it not for our unlawful failure to use the Union's hiring hall and WE WILL make those individuals whole for any losses they may have suffered as a result of our failure to make such contributions.

J. E. BROWN ELECTRIC, INC.